

Randy H. McMurray, Esq. (SBN 126888)
Email: RMcmurray@law-mh.com
Yana G. Henriks, Esq. (SBN 250638)
Email: YHenriks@law-mh.com
McMURRAY HENRIKS, LLP
5670 Wilshire Blvd., Suite 1450
Los Angeles, California 90036
Telephone: (323) 931-6200
Facsimile: (323) 931-9521

Attorneys for Plaintiffs **RICHARD MARTIN FRANCO, JR.**
and YVONNE FRANCO

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD MARTIN FRANCO, JR.,
an individual; YVONNE FRANCO, an
individual,

Plaintiff,

vs.

CITY OF WEST COVINA, a public
entity, WEST COVINA POLICE
DEPARTMENT, a public entity;
MARC TAYLOR, individually and in
his Official Capacity as Chief of Police
of the West Covina Police Department,
CORPORAL MIKE WEATHERMON,
an individual; and DOES 1-10,
inclusive,

Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES

1. **Excessive Force; 42 U.S.C. § 1983;**
2. **Excessive Force; 42 U.S.C. § 1983, *Monell*;**
3. **Failure to Train, Supervise, and Discipline; 42 U.S.C. § 1983, *Monell*;**
4. **Negligence;**
5. **Battery;**
6. **Violation of Cal. Civ. Code § 52.1;**
7. **Loss of Consortium**

DEMAND FOR JURY TRIAL

COME NOW PLAINTIFFS RICHARD MARTIN FRANCO, JR. AND
YVONNE FRANCO to complain of DEFENDANTS, and each of them, and
alleges as follow:

1 **INTRODUCTORY STATEMENT**

2 1. This is a civil rights action seeking monetary damages from Defendants
3 for violating various rights under the United States Constitution and California state
4 law in connection with the wrongful use of excessive force against PLAINTIFF
5 RICHARD MARTIN FRANCO, JR. (hereinafter "PLAINTIFF") on December 15,
6 2017.

7 **JURISDICTION**

8 2. This is a civil suit brought under the Federal Civil Rights Act, 42
9 U.S.C. § 1983 for violation of Plaintiff's rights as secured by the United States
10 Constitution. This court has "Federal Question" subject matter jurisdiction over the
11 parties and claims pursuant to 28 U.S.C. §1343(3) and 28 U.S.C. §1331. The Court
12 has personal jurisdiction over the parties in that each defendant is a citizen of the
13 state of California and a resident of the County of Los Angeles. Defendants
14 performed all torts alleged herein in the County of Los Angeles.

15 **VENUE**

16 3. Venue is proper in the Central District of California under 28 U.S.C.
17 sections 1391 (a) and (b) in that the underlying acts and injuries upon which the
18 present action is based occurred in the County of Los Angeles, California.
19 Moreover, all of the defendants live and work in the County of Los Angeles.

20 **PARTIES**

21 4. PLAINTIFF RICHARD MARTIN FRANCO, JR. is and was at all
22 times relevant herein, an individual residing in the County of Los Angeles, State of
23 California.

24 5. PLAINTIFF YVONNE FRANCO is and was at all times relevant
25 herein, an individual residing in the County of Los Angeles, State of California.

26 6. Defendant CITY OF WEST COVINA (herein "CITY") is and was at
27 all times relevant herein, a municipal corporation and political subdivision,
28 organized and existing under the laws of the State of California, and owns, operates,

1 manages, directs and/or controls WEST COVINA POLICE DEPARTMENT
2 (“WCPD”), an operating department of the CITY.

3 7. On June 13, 2018, PLAINTIFF presented Defendant CITY with a
4 Claim for Damages sustained as a result of the incident described in this Complaint
5 pursuant to California Government Code §§ 905, 910 et seq. Attached as Exhibit
6 “A” and incorporated herein by this reference is a true and correct copy of
7 PLAINTIFF’S Claim for Damages presented to CITY. As the date of the filing of
8 the instant Complaint, said Claim has been deemed denied by operation of law.

9 8. Defendant WEST COVINA POLICE DEPARTMENT (herein
10 “WCPD”) is and was at all times relevant herein, a municipal corporation and a
11 subdivision of the CITY.

12 9. Defendant, MARC TAYLOR (“TAYLOR”) at all materials times was
13 employed as Chief of Police of the WCPD by Defendant CITY. On information and
14 belief, Defendant TAYLOR is an employee of Defendant CITY and acts as a final
15 policymaker for Defendant WCPD on behalf of Defendant CITY. On information
16 and belief, Defendant TAYLOR is, and at all times mentioned in this Complaint
17 was, a resident of the County of Los Angeles, State of California.

18 10. Defendant CORPORAL MIKE WEATHERMON
19 (“WEATHERMON”), is and at all pertinent times was, an individual employed in
20 the County of Los Angeles by Defendants CITY and WCPD and supervised and
21 controlled by Defendants CITY and WCPD, as well as through other CITY and
22 WCPD policymakers and managers.

23 11. DOES 1 through 10, inclusive, are also those persons or entities whose
24 conduct caused the injuries and damages alleged herein. The true names and/or
25 capacities, whether individual, corporate, associate or otherwise of Defendants
26 DOES 1 through 10, inclusive, and each of them, are presently unknown to Plaintiff
27 who therefore sues said Defendants by such fictitious names. Plaintiff is informed
28 and believes and thereupon alleges that each of the Defendants herein fictitiously

1 named as a DOE is legally responsible, negligently or in some other actionable
2 manner, for the events and happenings hereinafter referred, and therefore,
3 proximately caused the injuries and damages to Plaintiffs as herein alleged. Plaintiff
4 will seek leave of Court to amend this Complaint and state the true names and/or
5 capacities of such fictitiously named Defendants when the same have been
6 ascertained.

7 12. In doing the acts alleged in this complaint, DEFENDANTS, and each
8 of them, were acting under the color of statutes, ordinances, regulations, customs,
9 laws, and usages of the CITY and the State of California and under the authority of
10 their respective offices.

11 13. DEFENDANTS, and each of them, were the agents, employees and
12 servants of each other and were acting at all times within the full course and scope
13 of their agency and employment, with the full knowledge and consent, either
14 expressed or implied, of their principal and/or employer and each of the other named
15 DEFENDANTS, and each of the DEFENDANTS had approved or ratified the
16 actions of the other DEFENDANTS thereby making all named DEFENDANTS
17 herein liable for the acts and/or omissions of their agents, servants and/or
18 employees.

19 **FACTS COMMON TO ALL CAUSES OF ACTION**

20 14. Plaintiff repeats and re-alleges all prior paragraphs of this Complaint
21 and incorporates the same herein by this reference as if those paragraphs were set
22 forth in full herein

23 15. On or around June 2018, a Los Angeles County Civil Grand Jury report
24 titled "Policing the Police," notified Defendants CITY and WCPD of its
25 investigation into concerns involving their use of force and supervision practices
26 with regard to transparency of their citizen complaint process, among other issues.

27 16. The Los Angeles County Civil Grand Jury report notified Defendants
28 CITY and WCPD that their practices and policies regarding the use of force against

1 citizens and recordkeeping regarding the same were deficient and routinely resulted
2 in the lack of transparency.

3 17. The Los Angeles County Civil Grand Jury report notified Defendants
4 CITY and WCPD of its findings that WCPD'S policies and practices regarding
5 oversight and management of citizen complaints due to the use of force against
6 citizens were deficient, unlawful, and encouraged a system of intimidation, resulting
7 in the failure of Defendants CITY and WCPD to track complaints and their
8 subsequent investigations, and those investigations weren't used to identify possible
9 problematic trends within the department. The Los Angeles County Civil Grand
10 Jury report recommended Defendants CITY and WCPD to remove warnings that
11 may intimidate or discourage persons from making a complaint on complaint forms
12 or related materials, develop a program or application for managing complaints and
13 investigations, use findings resulting from investigations of citizen complaints to
14 identify potential problems, and promote detailed and ongoing education and
15 training in all aspects of their citizen complaint process in order to be in compliance
16 with California Penal Code 832.5(a)(1).

17 18. On or about December 15, 2017, a victim made a false report, wherein
18 PLAINTIFFS vehicle was singled out to be pulled over even though PLAINTIFF
19 did not violate any California vehicle codes.

20 19. Defendant WEATHERMON activated his overhead code 3 lights along
21 with the siren affixed to his police vehicle and PLAINTIFF pulled over and came to
22 a stop.

23 20. Defendant WEATHERMON ordered the PLAINTIFF and the
24 passengers in his vehicle to place their hands up and all the parties complied.

25 21. At the relentless insistence of one of the PLAINTIFF'S passengers,
26 PLAINTIFF was forced to drive away and entered a Vons parking lot on Glendora
27 Avenue, where one of the passengers exited. PLAINTIFF continued onto Glendora
28

1 Avenue and came to a complete stop for the red light at the intersection of Glendora
2 Avenue and Cameron Avenue between two other stopped vehicles.

3 22. Defendant WEATHERMON'S police vehicle struck the rear bumper of
4 PLAINTIFF'S vehicle and caused it to be pushed forward. The second passenger
5 then exited PLAINTIFF'S vehicle from the right passenger side. PLAINTIFF began
6 to drive the van forward when Defendant WEATHERMON exited the safety of his
7 vehicle and approached PLAINTIFF while the PLAINTIFF'S vehicle was still in
8 motion.

9 23. Defendant WEATHERMON ordered PLAINTIFF to put his hands up
10 and simultaneously discharged 2 gunshots towards PLAINTIFF, striking him in the
11 head.

12 24. At the time PLAINTIFF was shot, his vehicle was still in motion.

13 25. At the time PLAINTIFF was shot, he was unarmed.

14 26. On information and belief, a reasonable law enforcement officer would
15 not have discharged his or her service weapon and wounded PLAINTIFF under the
16 same circumstances because: (a) PLAINTIFF posed no real, immediate or
17 significant threat of death or serious bodily injury to the Defendants or the public;
18 (b) the severity of the crime at issue, if any, was not inherently dangerous, but
19 negligible; (c) there were several alternative means of responding to the situation
20 without using deadly force; and (4) Defendant WEATHERMON did not make sure
21 it was safe prior to exiting his vehicle and exposed himself to danger by approaching
22 the PLAINTIFF while the PLAINTIFF'S vehicle was still in motion.

23 27. Immediately after PLAINTIFF was shot in the head by Defendant
24 WEATHERMON, PLAINTIFF was then transported to the hospital for medical
25 treatment.

26 28. As a direct result of being brutally battered by DEFENDANTS, and
27 each of them, PLAINTIFF has lost the use of an eye and sustained severe damage to
28 his jaw. Due to injuries to his head, PLAINTIFF suffered from severe impairment of

1 his cognitive faculties and memory that made it difficult for PLAINTIFF to reason,
2 plan, and keep track of deadlines.

3 29. As a direct and proximate result of DEFENDANTS' illegal, intentional,
4 wanton, and brutal battery on PLAINTIFF's body, PLAINTIFF was required to and
5 will continue to require medical care and treatment, including but not limited to,
6 additional surgeries all to PLAINTIFF's detriment in an amount to be proven at
7 trial.

8 30. As a direct and proximate result of DEFENDANTS' illegal, intentional,
9 wanton, and brutal battery on PLAINTIFF's body, PLAINTIFF was made sick and
10 disabled, and caused to and did suffer and sustain serious medical injuries all to
11 PLAINTIFF's further detriment in an amount to be proven at trial.

12 31. In the treatment of his injuries, PLAINTIFF has incurred, is presently
13 incurring and will continue to incur in the future, liability for services of physicians,
14 hospital care, medicines, other medical treatments, and other financial losses, the
15 true and exact amount which is currently unknown to PLAINTIFF at this time, all to
16 PLAINTIFF's further detriment in an amount to be proven at trial.

17 32. At all times relevant hereto, Defendant TAYLOR was responsible for
18 the training of all officers of Defendants CITY and WCPD in the proper use of
19 firearms in the performance of their duties as deputies. Defendant WEATHERMON
20 was trained by the CITY and WCPD, at the direction, special insistence, and under
21 the control of TAYLOR, in the use of firearms in accordance with the statutes,
22 ordinances, regulations, customs, and usages of Defendants CITY and WCPD and
23 the State of California. Defendant TAYLOR was also responsible for enforcing the
24 regulations of the WCPD and for ensuring that law enforcement personnel of the
25 WCPD obeyed the laws of the State of California and the United States of America.

26 33. Defendants CITY, WCPD, and TAYLOR, by and through their
27 supervisory employees and officials, have been on notice through complaints, both
28 formal and informal, that its officers have repeatedly engaged in a pattern and

1 practice of purposefully abridging the rights, constitutional and otherwise, of
2 persons within their jurisdiction. Despite such notice, the CITY, WCPD, TAYLOR
3 and certain of the DOE DEFENDANTS, and each of them, demonstrated deliberate
4 indifference to this pattern and practice of violations of rights by falling to take
5 necessary, appropriate, or adequate measures to ensure the cessation of such
6 conduct. This deliberate indifference of the Defendants amounts to an informal
7 policy or custom, and ratification, said policy or custom ratified being another
8 proximate cause of the injury of PLAINTIFF.

9 34. As a direct and proximate cause of the acts alleged above, PLAINTIFF
10 has had to hire the services of an attorney. PLAINTIFF has incurred and continues
11 to incur legal expenses, costs, and attorneys' fees, and is entitled to an award of
12 attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b). PLAINTIFF is presently
13 unaware of the precise amount of these expenses and fees and prays leave of court
14 to amend this Complaint when the amounts are more fully known.

15 **FIRST CAUSE OF ACTION**

16 **EXCESSIVE FORCE, 42 U.S.C. § 1983**

17 **(Against All Defendants)**

18 35. Plaintiff repeats and re-alleges all prior paragraphs of this Complaint
19 and incorporates the same herein by this reference as if those paragraphs were set
20 forth in full herein.

21 36. Defendant WEATHERMON used force, including deadly force, to
22 arrest and/or detain PLAINTIFF when he discharged his service weapon and
23 severely wounded Plaintiff. Defendant WEATHERMON acted under color of law at
24 all times relevant to this Complaint.

25 37. On information and belief, a reasonable law enforcement officer would
26 not have discharged his or her service weapon and wounded PLAINTIFF under the
27 same circumstances because: (a) PLAINTIFF posed no real, immediate or
28 significant threat of death or serious bodily injury to the Defendant

1 WEATHERMON or the public; (b) the severity of the crime at issue, if any, was not
2 inherently dangerous, but negligible; (c) there were several alternative means of
3 responding to the situation without using deadly force; and (d) Defendant
4 WEATHERMON did not make sure it was safe prior to exiting his vehicle and
5 exposed himself to danger by approaching the PLAINTIFF while the PLAINTIFF'S
6 vehicle was still in motion.

7 38. As a result, the use of deadly force was excessive and objectively
8 unreasonable under the circumstances. The force used was also performed with a
9 deliberate indifference to the safety and welfare of PLAINTIFF. Defendants' actions
10 thus deprived Plaintiff of his right to be free from the use of excessive force by law
11 enforcement and secure in her person against unreasonable searches and seizures as
12 guaranteed to her under the Fourth Amendment of the United States Constitution.

13 39. As a direct and proximate result of Defendants' deprivations and
14 violations of PLAINTIFF'S Fourth Amendment rights, Plaintiff has suffered general
15 and special damages according to proof at the time of trial.

16 40. As a further direct and proximate result of the foregoing, Plaintiff
17 further suffers from depression, nightmares, mental anguish, irritability, anxiety,
18 short-temper, moodiness, difficulty sleeping, increased appetite, social withdrawal,
19 tearfulness, and anger.

20 41. As a further result of the foregoing, Plaintiffs are entitled to recover
21 reasonable costs and attorney fees under 42 U.S.C. § 1988.

22 42. In committing the acts described above, Plaintiff is informed and
23 believes Defendant WEATHERMON acted with oppression, fraud, or malice,
24 entitling Plaintiffs to an award of punitive damages under 42 U.S.C. § 1983 and
25 California Code of Civil Procedure § 337.34 against Defendant WEATHERMON in
26 an amount according to proof at time of trial.

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3 **SECOND CAUSE OF ACTION**4 **EXCESSIVE FORCE, 42 U.S.C. § 1983, *MONELL***5 **(Plaintiff v. CITY, WCPD, TAYLOR and DOES 1-10)**

6 43. Plaintiff repeats and re-alleges all prior paragraphs of this Complaint
 7 and incorporates the same herein by this reference as if those paragraphs were set
 8 forth in full herein.

9 44. Defendants CITY, WCPD, TAYLOR and DOES 1-10 maintained an
 10 unconstitutional custom, policy or practice, within the meaning of *Monell v.*
 11 *Department of Social Services of the City of New York*, 436 U.S. 658 (1978)
 12 ("*Monell*"), of detaining and arresting individuals with use of excessive and deadly
 13 force and depriving persons of life, liberty and property. Defendants failed to
 14 implement a program or application for managing complaints and investigations and
 15 to use the findings resulting from investigations of citizen complaints to identify
 16 potential problems. Defendants encouraged a policy of intimidation and did not
 17 address problems regarding the conduct of police officers in making arrests,
 18 specifically the taking of precautions by a police officer.

19 45. Defendants either knew or had constructive knowledge that it should
 20 arm and train its law enforcement personnel against the use of unreasonable force
 21 and the requirement to take safety precautions by police officers when conducting
 22 an arrest. Defendants also either knew or had constructive knowledge they could
 23 save lives by training its officers in the safety precautions necessary to making an
 24 arrest. Despite having this knowledge, Defendants condoned, tolerated and through
 25 actions and inactions thereby ratified such policies.

26 46. The unconstitutional policy to correctly train police officers regarding
 27 their personal safety in the commission of an arrest was a direct cause of
 28 PLAINTIFF'S injury in this case.

47. By perpetrating, sanctioning, tolerating, and ratifying the conduct and other wrongful acts, Defendants CITY, WCPD, and TAYLOR acted with an intentional, reckless, and callous disregard for the life and constitutional and human rights of PLAINTIFF.

48. The conduct alleged herein violated PLAINTIFF'S right alleged above which has legally, proximately, foreseeably and actually caused Plaintiff to suffer general and special damages according to proof at the time of trial.

49. As a further direct and proximate result of the foregoing, Plaintiff further suffers from depression, nightmares, mental anguish, irritability, anxiety, short-temper, moodiness, difficulty sleeping, increased appetite, social withdrawal, tearfulness, and anger.

50. Plaintiff is also entitled to recover reasonable costs and attorney fees under 42 U.S.C. § 1988.

51. In committing the acts described above, Plaintiff is informed and believes Defendant WEATHERMON and DOES 1-10 acted with oppression, fraud, or malice, entitling Plaintiff to an award of punitive damages against Defendant WEATHERMON and DOES 1-10 in an amount according to proof at time of trial.

THIRD CAUSE OF ACTION

FAILURE TO PROPERLY TRAIN, SUPERVISE AND DISCIPLINE, 42

U.S.C. § 1983, *MONELL*

(Plaintiff v. CITY, WCPD, TAYLOR and DOES 1-10)

52. Plaintiff repeats and re-alleges all prior paragraphs of this Complaint and incorporates the same herein by this reference as if those paragraphs were set forth in full herein.

53. The CITY, WCPD, TAYLOR and DOES 1-10 as a matter of custom, practice, and policy, failed to maintain adequate and proper training for officers and law enforcement personnel in the WCPD necessary to educate the officers as to the Constitutional rights of arrestees, to prevent the consistent and systematic use of

1 excessive force by arresting officers, and to prevent the excessive force and extra
2 judicial punishment of potential arrestees by officers.

3 54. The CITY, WCPD, TAYLOR and DOES 1-10 also failed to provide
4 adequate supervision and discipline to officers and other law enforcement personnel
5 that hold the power, authority, insignia, equipment and arms entrusted to them.
6 Defendants also failed to promulgate and enforce adequate policies and procedures
7 related to the safety of police officers in the act of making an arrest.

8 55. Said custom, practice, and policy included a failure to adequately
9 investigate, supervise and discipline offending officers that fostered the custom,
10 practice, and policy within the WCPD which resulted in the wrongful shooting of
11 Plaintiff RICHARD FRANCO.

12 56. Therefore, these defendants, with deliberate indifference, disregarded a
13 duty to protect the public from official misconduct.

14 57. The failure to promulgate or maintain constitutionally adequate policies
15 regarding training was done with deliberate indifference to the rights of Plaintiff and
16 others in her position.

17 58. The constitutionally infirm lack of adequate training, supervision, and
18 discipline as to the officers and law enforcement personnel in this case caused
19 PLAINTIFF to suffer general and special damages according to proof at the time of
20 trial.

21 59. As a further direct and proximate result of the foregoing, Plaintiff
22 further suffers from depression, nightmares, mental anguish, irritability, anxiety,
23 short-temper, moodiness, difficulty sleeping, increased appetite, social withdrawal,
24 tearfulness, and anger.

25 60. Plaintiffs are entitled to recover reasonable costs and attorney fees
26 under 42 U.S.C. § 1988.

27 61. In committing the acts described above, Plaintiff is informed and
28 believes Defendant TAYLOR and DOES 1-10 acted with oppression, fraud, or

malice, entitling Plaintiff to an award of punitive damages against Defendant TAYLOR and DOES 1-10 in an amount according to proof at time of trial.

FOURTH CAUSE OF ACTION

NEGLIGENCE

(Against All Defendants)

62. Plaintiff repeats and re-alleges all prior paragraphs of this Complaint and incorporates the same herein by this reference as if those paragraphs were set forth in full herein.

63. On information and belief, a reasonable law enforcement officer would not have discharged his or her service weapon and wounded RICHARD MARTIN FRANCO, JR. under the same circumstances because: (a) RICHARD MARTIN FRANCO, JR. posed no real, immediate or significant threat of death or serious bodily injury to the Defendant WEATHERMON or the public; (b) the severity of the crime at issue, if any, was not inherently dangerous, but negligible; (c) there were several alternative means of responding to the situation without using deadly force; and (d) Defendant WEATHERMON did not make sure it was safe prior to exiting his vehicle and exposed himself to danger by approaching the PLAINTIFF while the PLAINTIFF'S vehicle was still in motion.

64. Therefore, in committing the acts described above, Defendant WEATHERMON was negligent, careless, reckless and/or otherwise failed to meet his duties, non-delegable and otherwise, which it owed to Plaintiff RICHARD MARTIN FRANCO, JR.

65. At all times material hereto the Defendant WEATHERMON knew or should have known that his failure to act reasonably when arresting or otherwise detaining Plaintiff RICHARD MARTIN FRANCO, JR., would result in serious bodily injury of Plaintiff.

66. As a direct and proximate result of the negligent and careless acts described above, Defendant WEATHERMON shot and severely injured RICHARD MARTIN FRANCO, JR. on December 15, 2017.

67. As a direct and proximate result of the negligent and careless acts described above, Plaintiff RICHARD MARTIN FRANCO, JR. has been generally and specially damaged in a sum to be established according to proof at the time of trial, as provided in Cal. Code of Civ. Proc. §§ 425.10 and 425.11.

68. As a further direct and proximate result of the foregoing, Plaintiff further suffers from depression, nightmares, mental anguish, irritability, anxiety, short-temper, moodiness, difficulty sleeping, increased appetite, social withdrawal, tearfulness, and anger.

69. On information and belief, the wrongful acts and conduct of Defendant WEATHERMON, as set forth above, was conducted or occurred deliberately, intentionally, knowingly, maliciously, willfully, wantonly, and with conscious and reckless disregard for the rights and safety of RICHARD MARTIN FRANCO, JR., entitling Plaintiff to an award of exemplary damages as provided by Section 337.34 of the California Code of Civil Procedure.

70. The CITY and WCPD are vicariously liable for the wrongful acts of Defendant WEATHERMON pursuant to section 815.2 of the California Government Code, which provides that a public entity is liable for the injuries caused by its employees within the scope of the employment if the employee's act would subject him or her to liability.

FIFTH CAUSE OF ACTION

BATTERY

(Against All Defendants)

71. Plaintiff repeats and re-alleges all prior paragraphs of this Complaint and incorporates the same herein by this reference as if those paragraphs were set forth in full herein.

1 72. On December 15, 2017, Defendants CITY and WCPD, through their
2 employee, Defendant WEATHERMON, intended to discharge and did discharge
3 two bullets from his service weapon into the head of RICHARD MARTIN
4 FRANCO, JR.

5 73. Defendant WEATHERMON had ample time to deliberate before
6 deploying deadly force and firing his service weapon and wounding PLAINTIFF.

7 74. On information and belief, a reasonable law enforcement officer would
8 not have discharged his or her service weapon and wounded PLAINTIFF under the
9 same circumstances because: (a) PLAINTIFF posed no real, immediate or
10 significant threat of death or serious bodily injury to the Defendants
11 WEATHERMON or the public; (b) the severity of the crime at issue, if any, was not
12 inherently dangerous, but negligible; (c) there were several alternative means of
13 responding to the situation without using deadly force; and (d) Defendant
14 WEATHERMON did not make sure it was safe prior to exiting his vehicle and
15 exposed himself to danger by approaching the PLAINTIFF while the PLAINTIFF'S
16 vehicle was still in motion.

17 75. As a result, the use of deadly force was excessive and objectively
18 unreasonable under the circumstances.

19 76. PLAINTIFF did not consent to the use of that force.

20 77. As a direct and proximate result of the assault and battery described
21 above, PLAINTIFF underwent several emergency surgeries.

22 78. As a direct and proximate result of the negligent and careless acts
23 described above, PLAINTIFF has been generally and specially damaged in a sum to
24 be established according to proof at the time of trial, as provided in Cal. Code of
25 Civ. Proc. §§ 425.10 and 425.11.

26 79. On information and belief, the wrongful acts and conduct of Defendant
27 WEATHERMON, as set forth above, was conducted or occurred deliberately,
28 intentionally, knowingly, maliciously, willfully, wantonly, and with conscious and

reckless disregard for the rights and safety of PLAINTIFF, entitling Plaintiff to an award of exemplary damages as provided by Section 337.34 of the California Code of Civil Procedure.

80. Defendants CITY and WCPD are vicariously liable for the wrongful acts of Defendant WEATHERMON pursuant to section 815.2 of the California Government Code, which provides that a public entity is liable for the injuries caused by its employees within the scope of the employment if the employee's act would subject him or her to liability.

SIXTH CAUSE OF ACTION

VIOLATION OF BANE ACT, CAL. CIVIL CODE § 52.1

(Against All Defendants)

81. Plaintiff repeats and re-alleges all prior paragraphs of this Complaint and incorporates the same herein by this reference as if those paragraphs were set forth in full herein.

82. Defendant WEATHERMON, while working as an officer for the CITY'S WCPD, and acting within the course and scope of their official duties, interfered with or attempted to interfere with the rights of PLAINTIFF to be free from unreasonable searches and seizures and unreasonable excessive force by threatening or committing acts involving violence, coercion or intimidation.

83. On information and belief, PLAINTIFF reasonably believed that if he exercised his constitutional rights to be free from unreasonable searches and seizures and unreasonable excessive force, Defendant WEATHERMON would commit acts involving violence, threats, coercion or intimidation against her person.

84. Defendant WEATHERMON injured PLAINTIFF, to prevent him from exercising her rights or to retaliate against Plaintiff for having exercised his rights.

85. The conduct alleged herein violated PLAINTIFF'S right alleged above which has legally, proximately, foreseeably and actually caused Plaintiff to suffer general and special damages according to proof at the time of trial.

1 86. As a further direct and proximate result of the foregoing, Plaintiff
2 further suffers from depression, nightmares, mental anguish, irritability, anxiety,
3 short-temper, moodiness, difficulty sleeping, increased appetite, social withdrawal,
4 tearfulness, and anger.

5 87. Defendants' violation of Plaintiffs' rights as guaranteed by Cal. Civ.
6 Code § 52.1 entitles Plaintiffs to reasonable attorneys' fees and costs of suit pursuant
7 to Cal. Civ. Code §§ 52.1, subd. (h), 52(b)(3).

8 88. In committing the acts described above, Plaintiff is informed and
9 believes Defendant WEATHERMON acted with a willful and conscious disregard
10 of Plaintiff's rights as secured by Cal. Civ. Code § 52.1, thus entitling Plaintiffs to
11 recover punitive damages pursuant to Cal. Civ. Code § 52, subd. (b)(1).

12 89. Defendants CITY and WCPD are vicariously liable for the wrongful
13 acts of Defendant WEATHERMON pursuant to section 815.2 of the California
14 Government Code, which provides that a public entity is liable for the injuries
15 caused by its employees within the scope of the employment if the employee's act
16 would subject him or her to liability.

17 **SEVENTH CAUSE OF ACTION**

18 **LOSS OF CONSORTIUM**

19 **(Against All Defendants)**

20 90. Plaintiff repeats and re-alleges all prior paragraphs of this Complaint
21 and incorporates the same herein by this reference as if those paragraphs were set
22 forth in full herein.

23 91. RICHARD MARTIN FRANCO, JR. and YVONNE FRANCO were
24 lawfully married at all times relevant to this action, and now are husband and wife.

25 92. On December 15, 2017, RICHARD MARTIN FRANCO, JR. was
26 injured physically when he was unreasonably shot by Defendant WEATHERMON.
27
28

1 93. As a direct and proximate result of Defendant's conduct, RICHARD
2 FRANCO sustained severe and permanent injuries and damages, including the loss
3 of an eye and extensive damage to his jaw.

4 94. Before suffering these injuries, RICHARD MARTIN FRANCO, JR.
5 was able to and did perform all the duties of a husband and did perform all these
6 duties, including assisting in maintaining the home, and providing love,
7 companionship, affection, society, sexual relations, moral support, and solace to
8 plaintiff. As a direct and proximate result of the injuries, RICHARD MARTIN
9 FRANCO, JR. has been unable to perform the duties of a husband in that he can no
10 longer assist with housework, have sexual intercourse, participate in family,
11 recreational, or social activities with YVONNE FRANCO, or contribute to the
12 household income. Due to the nature of the injuries sustained by RICHARD
13 MARTIN FRANCO, JR. and the severe physical and psychological strains they
14 cause him, RICHARD MARTIN FRANCO, JR. is no longer able to provide
15 YVONNE FRANCO with love, companionship, affection, society, moral support,
16 and solace. Because of these injuries, RICHARD MARTIN FRANCO, JR. will be
17 unable to perform these duties in the future.

18 95. As a direct and proximate result of the afore-mentioned injuries
19 suffered by Plaintiff YVONNE FRANCO'S spouse, RICHARD MARTIN
20 FRANCO, JR., Plaintiff YVONNE FRANCO has been deprived, continues to be
21 deprived, and expects to be deprived in the future, of her spouse's companionship,
22 affection, love, sexual relations, conjugal fellowship, physical assistance in
23 maintaining the family home and comfort for a non-determinable length of time,
24 which deprivation has caused, continues to cause, and in the future is expected to
25 cause YVONNE FRANCO to suffer depression, emotional distress, loss of earning
26 capacity, past, present, and future, and other injuries, the full extent of which has not
27 yet been ascertained, but which will be stated according to proof at trial.
28

96. As a direct and proximate result of the negligent and careless acts described above, PLAINTIFF has been generally and specially damaged in a sum to be established according to proof at the time of trial, as provided in Cal. Code of Civ. Proc. §§ 425.10 and 425.11.

97. On information and belief, the wrongful acts and conduct of Defendant WEATHERMON, as set forth above, was conducted or occurred deliberately, intentionally, knowingly, maliciously, willfully, wantonly, and with conscious and reckless disregard for the rights and safety of PLAINTIFF, entitling Plaintiff to an award of exemplary damages as provided by Section 337.34 of the California Code of Civil Procedure.

98. Defendants CITY and WCPD are vicariously liable for the wrongful acts of Defendant WEATHERMON pursuant to section 815.2 of the California Government Code, which provides that a public entity is liable for the injuries caused by its employees within the scope of the employment if the employee's act would subject him or her to liability.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For general damages in a sum according to proof at the time of trial;
2. For special damages in a sum according to proof at the time of trial;
3. For prejudgment and post-judgment interest according to any applicable provision of law, according to proof;
4. For costs of suit and reasonable attorneys' fees as provided by law, including, but not limited to 42 U.S.C. § 1988 and Cal. Civ. Code §§ 52.1 subd. (h), 52, subd. (b)(3).
5. For punitive damages as provided by law, including, but not limited to 42 U.S.C. § 1983, California Code of Civil Procedure § 337.34, and Cal. Civ. Code § 52, subd. (b)(1) against individual Defendants

1 WEATHERMON, and TAYLOR in an amount according to proof at
2 the time trial;

3 6. For such other and further relief as the court deems proper.
4

5 DATED: December 12, 2018

Respectfully Submitted,
McMURRAY HENRIKS, LLP

7 By: 

8 Randy H. McMurray, Esq.,

9 Yana G. Henriks, Esq.

Attorneys for Plaintiff

10 **RICHARD MARTIN FRANCO, JR..**

11 **YVONNE FRANCO**
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McMurray Henriks, LLP
5670 Wilshire Boulevard Suite 1450
Los Angeles, CA 90036

DEMAND FOR JURY TRIAL

Plaintiffs RICHARD MARTIN FRANCO, JR. AND YVONNE FRANCO
hereby demand a trial by jury on all causes of action.

DATED: December 12, 2018

Respectfully Submitted,
McMURRAY HENRIKS, LLP

By: 

Randy H. McMurray, Esq.,
Yana G. Henriks, Esq.
Attorneys for Plaintiff
RICHARD MARTIN FRANCO, JR..
YVONNE FRANCO

McMurray Henriks, LLP
5670 Wilshire Boulevard Suite 1450
Los Angeles, CA 90036